

**Introduced by Senator Kuehl**

February 18, 2005

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An act to amend Sections 300 and 11401 of the Welfare and Institutions Code, relating to foster care, and making an appropriation therefor.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 500, as introduced, Kuehl. AFDC-FC: pregnant and parenting foster youth.

Under existing law, a child may come within the jurisdiction of the juvenile court and become a dependent child of the court, including in cases of abuse or neglect, or failure of a parent or guardian to adequately supervise or protect the child. Existing law declares that a parent's or guardian's physical disability is only relevant to a court's determination to the extent that the parent's disability prevents him or her from exercising care or control.

This bill would additionally declare that a child whose parent has been adjudged a dependent child of the court shall not be considered to be at risk of abuse or neglect solely because of the age, dependent status, or foster care status of the parent.

Existing law establishes the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program, under which counties provide payments to foster care providers on behalf of qualified children in foster care. The program is funded by a combination of federal, state, and county funds, with moneys from the General Fund being continuously appropriated to pay for the state's share of AFDC-FC costs.

Under existing law, federal financial participation is available for certain children who have been adjudged dependent children or wards of the court, or who have been detained under a court order.

This bill would additionally authorize federal financial participation for a dependent child of the court whose parent is also a dependent child of the court who is receiving AFDC-FC benefits, if the parent and child are placed in the same foster care facility and are receiving reunification services, and the child is determined to be eligible for federal financial participation. By creating a new category for AFDC-FC eligibility, and thereby increasing county administration duties for the AFDC-FC program, by expanding AFDC-FC eligibility the bill would impose a state-mandated local program.

Because General Fund moneys are continuously appropriated for purposes of the AFDC-FC program, by expanding AFDC-FC eligibility the bill would constitute an appropriation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 300 of the Welfare and Institutions  
2     Code, as amended by Section 3 of Chapter 824 of the Statutes of  
3     2000, is amended to read:  
4     300. Any child who comes within any of the following  
5     descriptions is within the jurisdiction of the juvenile court which  
6     may adjudge that person to be a dependent child of the court:  
7     (a) The child has suffered, or there is a substantial risk that the  
8     child will suffer, serious physical harm inflicted nonaccidentally  
9     upon the child by the child's parent or guardian. For the purposes  
10    of this subdivision, a court may find there is a substantial risk of  
11    serious future injury based on the manner in which a less serious  
12    injury was inflicted, a history of repeated inflictions of injuries  
13    on the child or the child's siblings, or a combination of these and  
14    other actions by the parent or guardian which indicate the child is  
15    at risk of serious physical harm. For purposes of this subdivision,

1 “serious physical harm” does not include reasonable and  
2 age-appropriate spanking to the buttocks where there is no  
3 evidence of serious physical injury.

4 (b) The child has suffered, or there is a substantial risk that the  
5 child will suffer, serious physical harm or illness, as a result of  
6 the failure or inability of his or her parent or guardian to  
7 adequately supervise or protect the child, or the willful or  
8 negligent failure of the child’s parent or guardian to adequately  
9 supervise or protect the child from the conduct of the custodian  
10 with whom the child has been left, or by the willful or negligent  
11 failure of the parent or guardian to provide the child with  
12 adequate food, clothing, shelter, or medical treatment, or by the  
13 inability of the parent or guardian to provide regular care for the  
14 child due to the parent’s or guardian’s mental illness,  
15 developmental disability, or substance abuse. No child shall be  
16 found to be a person described by this subdivision solely due to  
17 the lack of an emergency shelter for the family. Whenever it is  
18 alleged that a child comes within the jurisdiction of the court on  
19 the basis of the parent’s or guardian’s willful failure to provide  
20 adequate medical treatment or specific decision to provide  
21 spiritual treatment through prayer, the court shall give deference  
22 to the parent’s or guardian’s medical treatment, nontreatment, or  
23 spiritual treatment through prayer alone in accordance with the  
24 tenets and practices of a recognized church or religious  
25 denomination, by an accredited practitioner thereof, and shall not  
26 assume jurisdiction unless necessary to protect the child from  
27 suffering serious physical harm or illness. In making its  
28 determination, the court shall consider (1) the nature of the  
29 treatment proposed by the parent or guardian, (2) the risks to the  
30 child posed by the course of treatment or nontreatment proposed  
31 by the parent or guardian, (3) the risk, if any, of the course of  
32 treatment being proposed by the petitioning agency, and (4) the  
33 likely success of the courses of treatment or nontreatment  
34 proposed by the parent or guardian and agency. The child shall  
35 continue to be a dependent child pursuant to this subdivision only  
36 so long as is necessary to protect the child from risk of suffering  
37 serious physical harm or illness.

38 (c) The child is suffering serious emotional damage, or is at  
39 substantial risk of suffering serious emotional damage, evidenced  
40 by severe anxiety, depression, withdrawal, or untoward

1 aggressive behavior toward self or others, as a result of the  
2 conduct of the parent or guardian or who has no parent or  
3 guardian capable of providing appropriate care. No child shall be  
4 found to be a person described by this subdivision if the willful  
5 failure of the parent or guardian to provide adequate mental  
6 health treatment is based on a sincerely held religious belief and  
7 if a less intrusive judicial intervention is available.

8 (d) The child has been sexually abused, or there is a  
9 substantial risk that the child will be sexually abused, as defined  
10 in Section 11165.1 of the Penal Code, by his or her parent or  
11 guardian or a member of his or her household, or the parent or  
12 guardian has failed to adequately protect the child from sexual  
13 abuse when the parent or guardian knew or reasonably should  
14 have known that the child was in danger of sexual abuse.

15 (e) The child is under the age of five and has suffered severe  
16 physical abuse by a parent, or by any person known by the  
17 parent, if the parent knew or reasonably should have known that  
18 the person was physically abusing the child. For the purposes of  
19 this subdivision, “severe physical abuse” means any of the  
20 following: any single act of abuse which causes physical trauma  
21 of sufficient severity that, if left untreated, would cause  
22 permanent physical disfigurement, permanent physical disability,  
23 or death; any single act of sexual abuse which causes significant  
24 bleeding, deep bruising, or significant external or internal  
25 swelling; or more than one act of physical abuse, each of which  
26 causes bleeding, deep bruising, significant external or internal  
27 swelling, bone fracture, or unconsciousness; or the willful,  
28 prolonged failure to provide adequate food. A child may not be  
29 removed from the physical custody of his or her parent or  
30 guardian on the basis of a finding of severe physical abuse unless  
31 the social worker has made an allegation of severe physical abuse  
32 pursuant to Section 332.

33 (f) The child’s parent or guardian caused the death of another  
34 child through abuse or neglect.

35 (g) The child has been left without any provision for support;  
36 physical custody of the child has been voluntarily surrendered  
37 pursuant to Section 1255.7 of the Health and Safety Code and the  
38 child has not been reclaimed within the 14-day period specified  
39 in subdivision (e) of that section; the child’s parent has been  
40 incarcerated or institutionalized and cannot arrange for the care

1 of the child; or a relative or other adult custodian with whom the  
2 child resides or has been left is unwilling or unable to provide  
3 care or support for the child, the whereabouts of the parent are  
4 unknown, and reasonable efforts to locate the parent have been  
5 unsuccessful.

6 (h) The child has been freed for adoption by one or both  
7 parents for 12 months by either relinquishment or termination of  
8 parental rights or an adoption petition has not been granted.

9 (i) The child has been subjected to an act or acts of cruelty by  
10 the parent or guardian or a member of his or her household, or  
11 the parent or guardian has failed to adequately protect the child  
12 from an act or acts of cruelty when the parent or guardian knew  
13 or reasonably should have known that the child was in danger of  
14 being subjected to an act or acts of cruelty.

15 (j) The child's sibling has been abused or neglected, as defined  
16 in subdivision (a), (b), (d), (e), or (i), and there is a substantial  
17 risk that the child will be abused or neglected, as defined in those  
18 subdivisions. The court shall consider the circumstances  
19 surrounding the abuse or neglect of the sibling, the age and  
20 gender of each child, the nature of the abuse or neglect of the  
21 sibling, the mental condition of the parent or guardian, and any  
22 other factors the court considers probative in determining  
23 whether there is a substantial risk to the child.

24 It is the intent of the Legislature that nothing in this section  
25 disrupt the family unnecessarily or intrude inappropriately into  
26 family life, prohibit the use of reasonable methods of parental  
27 discipline, or prescribe a particular method of parenting. Further,  
28 nothing in this section is intended to limit the offering of  
29 voluntary services to those families in need of assistance but who  
30 do not come within the descriptions of this section. To the extent  
31 that savings accrue to the state from child welfare services  
32 funding obtained as a result of the enactment of the act that  
33 enacted this section, those savings shall be used to promote  
34 services which support family maintenance and family  
35 reunification plans, such as client transportation, out-of-home  
36 respite care, parenting training, and the provision of temporary or  
37 emergency in-home caretakers and persons teaching and  
38 demonstrating homemaking skills. The Legislature further  
39 declares that a physical disability, such as blindness or deafness,  
40 is no bar to the raising of happy and well-adjusted children and

1 that a court's determination pursuant to this section shall center  
2 upon whether a parent's disability prevents him or her from  
3 exercising care and control. *The Legislature further declares that*  
4 *a child whose parent has been adjudged a dependent child of the*  
5 *court pursuant to this section shall not be considered to be at risk*  
6 *of abuse or neglect solely because of the age, dependent status,*  
7 *or foster care status of the parent.*

8 As used in this section "guardian" means the legal guardian of  
9 the child.

10 (k) This section shall be repealed on January 1, 2006, unless a  
11 later enacted statute extends or deletes that date.

12 SEC. 2. Section 300 of the Welfare and Institutions Code, as  
13 added by Section 3.5 of Chapter 824 of the Statutes of 2000, is  
14 amended to read:

15 300. Any child who comes within any of the following  
16 descriptions is within the jurisdiction of the juvenile court which  
17 may adjudge that person to be a dependent child of the court:

18 (a) The child has suffered, or there is a substantial risk that the  
19 child will suffer, serious physical harm inflicted nonaccidentally  
20 upon the child by the child's parent or guardian. For the purposes  
21 of this subdivision, a court may find there is a substantial risk of  
22 serious future injury based on the manner in which a less serious  
23 injury was inflicted, a history of repeated inflictions of injuries  
24 on the child or the child's siblings, or a combination of these and  
25 other actions by the parent or guardian which indicate the child is  
26 at risk of serious physical harm. For purposes of this subdivision,  
27 "serious physical harm" does not include reasonable and  
28 age-appropriate spanking to the buttocks where there is no  
29 evidence of serious physical injury.

30 (b) The child has suffered, or there is a substantial risk that the  
31 child will suffer, serious physical harm or illness, as a result of  
32 the failure or inability of his or her parent or guardian to  
33 adequately supervise or protect the child, or the willful or  
34 negligent failure of the child's parent or guardian to adequately  
35 supervise or protect the child from the conduct of the custodian  
36 with whom the child has been left, or by the willful or negligent  
37 failure of the parent or guardian to provide the child with  
38 adequate food, clothing, shelter, or medical treatment, or by the  
39 inability of the parent or guardian to provide regular care for the  
40 child due to the parent's or guardian's mental illness,

1 developmental disability, or substance abuse. No child shall be  
2 found to be a person described by this subdivision solely due to  
3 the lack of an emergency shelter for the family. Whenever it is  
4 alleged that a child comes within the jurisdiction of the court on  
5 the basis of the parent's or guardian's willful failure to provide  
6 adequate medical treatment or specific decision to provide  
7 spiritual treatment through prayer, the court shall give deference  
8 to the parent's or guardian's medical treatment, nontreatment, or  
9 spiritual treatment through prayer alone in accordance with the  
10 tenets and practices of a recognized church or religious  
11 denomination, by an accredited practitioner thereof, and shall not  
12 assume jurisdiction unless necessary to protect the child from  
13 suffering serious physical harm or illness. In making its  
14 determination, the court shall consider (1) the nature of the  
15 treatment proposed by the parent or guardian, (2) the risks to the  
16 child posed by the course of treatment or nontreatment proposed  
17 by the parent or guardian, (3) the risk, if any, of the course of  
18 treatment being proposed by the petitioning agency, and (4) the  
19 likely success of the courses of treatment or nontreatment  
20 proposed by the parent or guardian and agency. The child shall  
21 continue to be a dependent child pursuant to this subdivision only  
22 so long as is necessary to protect the child from risk of suffering  
23 serious physical harm or illness.

24 (c) The child is suffering serious emotional damage, or is at  
25 substantial risk of suffering serious emotional damage, evidenced  
26 by severe anxiety, depression, withdrawal, or untoward  
27 aggressive behavior toward self or others, as a result of the  
28 conduct of the parent or guardian or who has no parent or  
29 guardian capable of providing appropriate care. No child shall be  
30 found to be a person described by this subdivision if the willful  
31 failure of the parent or guardian to provide adequate mental  
32 health treatment is based on a sincerely held religious belief and  
33 if a less intrusive judicial intervention is available.

34 (d) The child has been sexually abused, or there is a  
35 substantial risk that the child will be sexually abused, as defined  
36 in Section 11165.1 of the Penal Code, by his or her parent or  
37 guardian or a member of his or her household, or the parent or  
38 guardian has failed to adequately protect the child from sexual  
39 abuse when the parent or guardian knew or reasonably should  
40 have known that the child was in danger of sexual abuse.

(e) The child is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, “severe physical abuse” means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child’s parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; the child’s parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances



surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control. *The Legislature further declares that a child whose parent has been adjudged a dependent child of the court pursuant to this section shall not be considered to be at risk of abuse or neglect solely because of the age, dependent status, or foster care status of the parent.*

As used in this section, "guardian" means the legal guardian of the child.

SEC. 3. Section 11401 of the Welfare and Institutions Code is amended to read:

11401. Aid in the form of AFDC-FC shall be provided under this chapter on behalf of any child under the age of 18 years, except as provided in Section 11403, who meets the conditions of subdivision (a), (b), (c), (d), (e), ~~or (f)~~ (f), or (g):

(a) The child has been relinquished, for purposes of adoption, to a licensed adoption agency, or the department, or the parental rights of either or both of his or her parents have been terminated

1 after an action under the Family Code has been brought by a  
2 licensed adoption agency or the department, provided that the  
3 licensed adoption agency or the department, if responsible for  
4 placement and care, provides to those children all services as  
5 required by the department to children in foster care.

6 (b) The child has been removed from the physical custody of  
7 his or her parent, relative, or guardian as a result of a voluntary  
8 placement agreement or a judicial determination that continuance  
9 in the home would be contrary to the child's welfare and that, if  
10 the child was placed in foster care, reasonable efforts were made,  
11 consistent with Chapter 5 (commencing with Section 16500) of  
12 Part 4, to prevent or eliminate the need for removal of the child  
13 from his or her home and to make it possible for the child to  
14 return to his or her home, and any of the following applies:

15 (1) The child has been adjudged a dependent child of the court  
16 on the grounds that he or she is a person described by Section  
17 300.

18 (2) The child has been adjudged a ward of the court on the  
19 grounds that he or she is a person described by Sections 601 and  
20 602.

21 (3) The child has been detained under a court order, pursuant  
22 to Section 319 or 636, that remains in effect.

23 (4) The child's dependency jurisdiction has resumed pursuant  
24 to Section 387.

25 (c) The child has been voluntarily placed by his or her parent  
26 or guardian pursuant to Section 11401.1.

27 (d) The child is living in the home of a nonrelated legal  
28 guardian.

29 (e) The child has been placed in foster care under the federal  
30 Indian Child Welfare Act. Sections 11402, 11404, and 11405  
31 shall not be construed as limiting payments to Indian children, as  
32 defined in the federal Indian Child Welfare Act, placed in  
33 accordance with that act.

34 (f) To be eligible for federal financial participation, ~~all~~ *either*  
35 of the following conditions shall ~~exist~~ *be satisfied*:

36 (1) (A) The child meets the conditions of subdivision (b).

37 ~~(2)~~

38 (B) The child has been deprived of parental support or care for  
39 any of the reasons set forth in Section 11250.

40 ~~(3)~~

1 (C) The child has been removed from the home of a relative as  
2 defined in Section 233.90(c)(1) of Title 45 of the Code of Federal  
3 Regulations, as amended.

4 ~~(4)–~~

5 (D) The requirements of Sections 671 and 672 of Title 42 of  
6 the United States Code, as amended, have been met.

7 (2) (A) *The child meets the requirements of subdivision (g).*

8 (B) *The requirements of Sections 671 and 672 of Title 42 of*  
9 *the United States Code, as amended, have been met.*

10 (g) *The child meets all of the following conditions:*

11 (1) *The child has been adjudged to be a ward of the court on*  
12 *the ground that he or she is a person described in Section 300.*

13 (2) *The child's parent also has been adjudged to be a*  
14 *dependent child of the court on the ground that he or she is a*  
15 *person described by Section 300 and is receiving benefits under*  
16 *this chapter.*

17 (3) *The child is placed in the same licensed or approved foster*  
18 *care facility in which his or her parent is placed and the child's*  
19 *parent is receiving reunification services with respect to that*  
20 *child.*

21 SEC. 4. If the Commission on State Mandates determines that  
22 this act contains costs mandated by the state, reimbursement to  
23 local agencies and school districts for those costs shall be made  
24 pursuant to Part 7 (commencing with Section 17500) of Division  
25 4 of Title 2 of the Government Code.